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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,199	11/28/2001	James A. Davis	B-4258CIP 619319-4	4019
7590	03/30/2004		EXAMINER	
LADAS & PARRY Suite 2100 5670 Wilshire Boulevard Los Angeles, CA 90036-5679			MOISE, EMMANUEL LIONEL	
		ART UNIT	PAPER NUMBER	9
		2136		
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/997,199	DAVIS ET AL.
	Examiner Emmanuel L. Moise	Art Unit 2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17-19 is/are allowed.
- 6) Claim(s) 1-3, 20 and 21 is/are rejected.
- 7) Claim(s) 4-16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5, 7, and 8.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. Claims 1-21 are presented for examination.

### ***Specification***

2. The specification is objected to because Applicant has failed to provide the section headings of the different sections of the specification as provided in 37 CFR 1.77(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-3 and 20-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, and 32-33, respectively of copending Application No. 09/915,719. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the invention claimed in the present case and the parent is such that one of ordinary skill in the art would have implemented the claimed invention based on the teachings of the parent case. Both, the present and the parent applications claim a method of controlling, or testing a magnetoresistive solid state storage device, comprising the steps of accessing a set of the storage cells, and determining whether information is unrecoverable from a block of ECC encoded data or whether the accessed set of storage cell is suitable for storing at least one block of ECC encoded data.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Aichelmann (U.S. Patent No. 4,458,349).

As per claim 1, Aichelmann teaches the claimed method for testing a magnetoresistive solid-state storage device, the method comprising the steps of: accessing a set of magnetoresistive storage cells, the set being arranged in use to store at least one block of ECC encoded data (column 4, lines 18-31); and determining whether the accessed set of storage cells is suitable for, in use, storing at least one block of ECC encoded data (column 4, lines 41-65).

As per claim 2, Aichelmann teaches that the method comprises the step of determining whether there is greater than acceptable probability that, in use, information will be unrecoverable or that a mis-correct will occur (column 4, lines 27-33).

As per claim 3, Aichelmann further teaches that the method comprises determining, from accessing the set of storage cells, and determining symbols in a block of ECC encoded data that, in use, would be affected by the failed cells (column 4, lines 53-57).

As per claim 20, Aichelmann teaches the claimed magnetoresistive solid-state storage device (column 3, line 15 through column 4, line 65), comprising: at least one array of magnetoresistive storage cells (column 3, lines 21-24);

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an ECC encoding unit, for, in use, forming a block of ECC encoded data from a unit of original information (Figure 1, element 12);

a controller arranged to store the block of ECC encoded data in a set of the storage cells (Figure 1, element 10); and

a test unit arranged to access the set of storage cells, and determine whether the accessed set of storage cells is suitable for, in use, storing the block of ECC encoded data (column 4, lines 41-65).

As per claim 21, Aichelmann teaches an apparatus that comprises the magnetoresistive solid-state storage device of claim 20 (column 3, line 15 through column 4, line 65).

***Allowable Subject Matter***

7. Claims 4-16 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 17-19 are allowable over the prior art of record.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

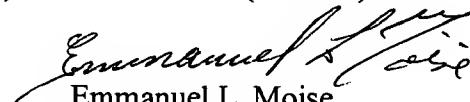
5,502,728 (Smith, III); 5,887,270 (Brant et al.); 6,279,133 (Vafai et al.); and 6,430,702 (Santeler et al.).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel L. Moise whose telephone number is (703)305-9763. The examiner can normally be reached on M-F (9:30-6:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. Sheikh can be reached on (703)305-9648. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel L. Moise  
Primary Examiner  
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